THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.17777 OF 2005

17th DAY OF AUGUST, 2005

Between:

Toddy Cooperative Society, Hastinapur (v),

Saroornagar (M) RR District, rep. by its

Secretary G.Dhanaraj Goud

Petitioner

A n d :

The Prohibition & Excise Superintendent,

RR District, Hyderabad.

Respondent

ORAL ORDER :

Aggrieved by the inaction by the respondent in not sending one of the samples drawn from the toddy shop of the petitioner-Society to an independent laboratory, this writ petition is filed.

The Excise officials inspected the Toddy shop of the petitioner-Society – a licensed Toddy Tappers Cooperative Society, on 27.7.2005 and on conducting a spot test alleging that the toddy was adulterated with diazepam three samples of toddy were

drawn under cover of panchanama as required under Rule 24 of the A.P. Excise (Arracks and Toddy Special Condition of Licenses) Rules, 1969 (for short 'the Rules'). On 3.6.2005 the petitioner has taken a DD for Rs.250/- favouring the Director, Institute of Preventive Medicine and State Food Laboratory and submitted an application on the same day to the respondent seeking sending of one of the samples to the aforementioned laboratory as the petitioner-society disputes the correctness of the alleged spot test. Despite the application having been made within the time stipulated in Rule 14 of the Rules, it is the petitioner's complaint, the respondent has not taken any action to send the second sample to an independent laboratory for its testing and report.

Learned Government Pleader for Excise, on instructions, submits that after receipt of the application the respondent had by a letter dated 10.08.2005 instructed the SHO, Saroornagar, to file a memo before the Judicial First Class Magistrate concerned for permission to send the second sample to the independent laboratory named by the licensee, pursue the matter and obtain and submit a copy of the 2nd analysis soon after its receipt. It is represented by the learned Government Pleader that despite the respondent's communication dated 10.8.2005 even till today no memo has been filed by the SHO, Saroornagar, as required.

In the context of the statutory mandate qua Rule 24 of the Rules, the respondent has no discretion whether to send or not send the second sample to an independent laboratory named by the licensee. Once the requisite formalities are fulfilled viz., furnishing of the DD within time, the respondent is obliged to take steps immediately to send 2nd sample for an independent analysis. Despite the petitioner having made an application on 3.8.2005 the respondent had not acted till 10.8.2005 and even till date a memo is not filed before the concerned court by the concerned SHO. Such delays might eventually hamper the proper analysis and the conclusion as to whether the toddy is adulterated. The inaction on the part of the respondent is inexplicable and constitutes *prima facie*, an abdication of statutory responsibility.

In the aforesaid circumstances, after hearing the learned Government Pleader for Excise, the writ petition is disposed of directing the respondent to forthwith and in any event within Twenty-four (24) hours from the date of receipt of a copy of this order to take steps without fail or demur, to file or cause to be filed a memo before the concerned Magistrate for sending the 2nd sample to the independent laboratory

of the petitioner's choice. The respondent shall also take steps to pursue the appropriate court for expeditious action on the memo filed by him. No order as to costs.

Dated: 17.08.2005 ----------

Pvsn Justice G. Raghuram